

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rule making related to allocation of private activity bonds and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to amend Chapter 8, “Private Activity Bond Allocation,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 7C.

Purpose and Summary

The purpose of the proposed amendments is to update and clarify the rules surrounding the allocation of private activity bonds, as defined in Section 141 of the Internal Revenue Code. The rules in Chapter 8 have not been revised for many years.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on November 13, 2018. Comments should be directed to:

Mark Thompson
Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312
Phone: 515.725.4937
Email: mark.thompson@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 265—8.1(7C) as follows:

265—8.1(7C) General. The governor has appointed the executive director of the Iowa finance authority as the governor's designee responsible for administration of the law which establishes procedures for allocation of private activity bonds as defined in Section 141 of the Internal Revenue Code. Procedures set out in the law and in these rules shall be followed in allocating the private activity bond state ceiling ("state ceiling") between cities, counties and the state of Iowa. ~~For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes in the percentages set forth in Iowa Code section 7C.4A. The state ceiling shall be allocated among all issuers for those various purposes annually in accordance with Iowa Code chapter 7C and these rules. All applications received in any calendar year shall expire as of December 31 of that year.~~

ITEM 2. Amend rule 265—8.2(7C) as follows:

265—8.2(7C) Forms and applications. Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312; or on the website at iowafinanceauthority.gov. The telephone number of the authority is (515)725-4900. The facsimile number of the authority is (515)725-4901.

8.2(1) An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application by filing the form, available from the governor's designee, entitled "Private Activity Volume Cap Application" for the allocation of a portion of the private activity bond state ceiling allocated pursuant to Iowa Code chapter 7C. Applications may be submitted electronically or via email or facsimile. An application for current year allocation or carryforward allocation may be submitted at any time.

8.2(2) An application for allocation may be made only after the governing body of an issuer has adopted a resolution evidencing an intent to issue the bonds.

8.2(3) An application must be accompanied by the application fee set forth in rule 265—8.10(7C), and all required attachments to the application must be submitted before such application is considered for allocation under rule 265—8.5(7C).

8.2(4) An application for allocation for industries under Iowa Code section 7C.4A(5) is limited to \$10 million per project per calendar year.

8.2(5) The state ceiling allocated under Iowa Code sections 7C.4A(4), 7C.4A(5), 7C.4A(6) and 7C.4A(7) shall be allocated among all issuers as provided in rules 265—8.3(7C) and 265—8.4(7C).

This rule is intended to implement Iowa Code sections 7C.4, 7C.5 and 7C.6.

ITEM 3. Amend rule 265—8.3(7C) as follows:

265—8.3(7C) Formula for Applications for current allocation received prior to the calendar year for such allocation.

8.3(1) The state ceiling shall be allocated among all issuers on the basis of chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor's designee. Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the preceding year with a request that the application be treated as received when the Iowa finance authority opens for business on the first business day of the calendar year for which

the application is made. Applications submitted in this manner must be clearly marked on the first page of such application with words such as: "This application for private activity bond allocation for year 2018 is to be held for constructive delivery and receipt by the Iowa finance authority upon the opening of business on the first business day of calendar year 2018." There may be only one application for each separate project. All applications so received with the application fee and any required documentation attached will be deemed received simultaneously by the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure.

8.3(2) ~~All applications that are submitted for receipt pursuant to the provisions of subrule 8.4(2) shall be considered simultaneously received at the opening of business on the first business day of the calendar year, and the same date, hour and minute shall be stamped on each application so received.~~

~~a. If the total amount of allocations requested in all of the complete applications received pursuant to subrule 8.4(2) 8.3(1) that seek (a) allocations of bonds for first-time farmers pursuant to Iowa Code section 7C.4A(4), (b) allocations for industries pursuant to Iowa Code subsection section 7C.4A(5) exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3) "a."~~

~~b. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek, or (c) allocations of private activity bonds issued by public political subdivisions, the proceeds of which are used by the issuing subdivision pursuant to Iowa Code section 7C.4A(6), exceed the amount of the state ceiling available for that the respective purpose, the applications for each applicable purpose will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3) "b." subrule 8.3(3).~~

8.3(3) Allocation process.

~~a. In order to determine the order of allocation of the state ceiling to each of the applications for first-time farmer purposes, industrial purposes or for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) subrule 8.3(1), each application for the applicable purpose shall be assigned a preference number determined by a random drawing for allocation for such purpose conducted at approximately 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application for a specified purpose shall be assigned an identification code that shall be written on the outside first page of the sealed envelope containing the application. The identification codes for applications for a specified purpose shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes for each application for the specified purpose shall be placed in a container separate containers, mixed, and drawn from the applicable container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling for such purpose. The application corresponding with the identification code that is selected second shall be placed second on the applicable list, and so forth. Drawings shall continue until all applications for each specified purpose are assigned a place on the list of applications for such purpose received.~~

~~b. In order to determine the order of allocation of the state ceiling to each of the applications for state ceiling for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Applications shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with~~

the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

~~8.3(4)~~ The governor's designee shall maintain one list of applications for private activity bonds for the purpose of industries and a separate list for applications for private activity bonds for the use of political subdivisions. The applications that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) shall be listed in the order of preferences established pursuant to paragraphs 8.3(3) "a" and 8.3(3) "b." Applications received after the opening of the first day of business of a calendar year shall be added to the appropriate list depending upon the subject of the application in the chronological order received.

~~8.3(5)~~ Formula for allocations following June 30 of each year. As permitted by Iowa Code section 7C.5, following June 30 of each year issuers which initially applied for state ceiling allocated under Iowa Code section 7C.4A(6) for bonds, the proceeds of which are to be used by the issuing political subdivision, shall be given priority over any applications received for state ceiling for bonds otherwise requiring an allocation under Section 146 of the Internal Revenue Code.

This rule is intended to implement Iowa Code sections 7C.4A(7) "a" and 7C.5.

ITEM 4. Amend rule 265—8.4(7C) as follows:

265—8.4(7C) Application for current allocation received during the calendar year.

~~8.4(1)~~ An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application by filing the form available from the governor's designee entitled, "Application and Response," for the allocation of a portion of the private activity bond state ceiling. Applications for current allocation for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year.

~~8.4(2)~~ Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the previous year with a request that the application be treated as received when the authority opens for business on the first business day of the calendar year for which the application is made. Applications submitted in this manner must be contained in a sealed envelope that is clearly marked with words such as: "This application for private activity bond allocation for year 2001 is to be held for constructive delivery and receipt, and stamped 'received' by the Iowa Finance Authority upon the opening of business on the first business day of calendar year 2001." Applicants should also indicate on the outside of the sealed envelope the type of bond for which application is made and the amount requested. There may be only one application for each separate project. All applications so received will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure. Complete applications received during the calendar year will be allocated for each applicable purpose (other than applications for which the Iowa finance authority determines, in its sole discretion, to make an allocation under Iowa Code section 7C.4A(1) "a"(4) pursuant to subrule 8.5(3) and subject to subrule 8.5(2)) in the order such application is received.

~~8.4(3)~~ Applications for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year. Applications must be contained in a sealed envelope that is clearly marked with the year for which the application is made, the type of bond sought, and the amount of the state ceiling requested. Applications received during the calendar year will be immediately stamped with the day, hour and minute they are received by the authority.

~~8.4(4)~~ All applications received pursuant to the provisions of subrule 8.4(2) will be deemed to have been received simultaneously on the date, hour and minute that the authority opens for business on the first business day of the year for which the applications are made.

This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.

ITEM 5. Amend rule 265—8.5(7C) as follows:

265—8.5(7C) Certification of current allocation. ~~This rule implements 2000 Iowa Acts, chapter 1166, section 8, providing that “for the calendar year beginning January 1, 2001, applications for the state ceiling allocation under [Iowa Code] section 7C.4A, subsection 5, shall not be approved prior to March 1.” For the calendar year beginning January 1, 2001, unless Iowa Code chapter 7C has been otherwise amended, upon receipt of a completed application, the~~

8.5(1) The governor’s designee shall maintain separate lists of applications for private activity bonds for the purpose of industries, for private activity bonds for the use of political subdivisions, and for allocation pursuant to Iowa Code section 7C.4A(7). If there are additional applications after the state ceiling for the purpose of industries is fully allocated and, before June 30, the state ceiling for the use of political subdivisions is fully allocated to applications, all applications that have not been allocated any state ceiling will be placed on the list for allocation pursuant to Iowa Code section 7C.4A(7) in the chronological order of receipt without regard to the purpose for which such applications were made.

8.5(2) The governor’s designee shall promptly, commencing March 1, 2001, certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose of the project for which the application was submitted, in the order as determined by Iowa Code chapter 7C and rules 265—8.3(7C) and 265—8.4(7C). The governor’s designee shall continue to allocate the state ceiling for each purpose separately (or, if the allocation is made under Iowa Code section 7C.4A(7), in the chronological order of applications received) until all the available state ceiling for that purpose is fully allocated. A project receiving an allocation made under Iowa Code section 7C.4A(7) is limited to \$50 million in any calendar year. If there is not sufficient available state ceiling to fully fund an application which is next in order for allocation, the governor’s designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor’s designee of its decision to take the available allocation within five calendar days of receiving notice of that option, the available state ceiling shall be offered to the next application on the list under the same conditions, and the initial offeree will maintain its position on the list. If the partial allocation is accepted, the applicant ~~shall~~ may submit a new application for additional state ceiling and that application will be added to the bottom of the applicable list in the chronological order of its receipt.

8.5(3) If the bonds are issued and delivered prior to the expiration date of the allocation, then the issuer or the issuer’s attorney shall within ten days following the issuance and delivery of the bonds notify the governor’s designee by filing the form captioned “~~Notice~~ “Private Activity Volume Cap Notice of Issuance and Delivery of Bonds.” ~~Upon receipt of the form the governor’s designee shall return a time-stamped copy of the form to the issuer or issuer’s attorney.~~

8.5(4) Upon receipt of a complete application for allocation for a qualified residential rental project, the bonds for which will be issued by the Iowa finance authority, the Iowa finance authority may determine in its sole discretion to allocate a portion of its allocation under Iowa Code section 7C.4A(1) “a” (4) to such application. If the Iowa finance authority determines in its sole discretion to make such a certification of allocation, the Iowa finance authority has the sole discretion to determine the amount and order of such certification of each such allocation.

This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.

ITEM 6. Amend rule 265—8.6(7C) as follows:

265—8.6(7C) State ceiling carryforwards. In the event the aggregate principal amount of bonds issued by all issuers in a calendar year is less than the state ceiling for that calendar year, then an issuer or beneficiary may apply to the governor’s designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The application must be in writing and shall comply with the carryforward provisions of Section 146(f) of the Internal Revenue Code and regulations promulgated under that section. ~~All applications for carryforward of state ceiling must be filed with the governor’s designee by December 31 of the calendar year for which the allocation is to be carried forward from~~ Any carryforward allocation that has not expired under Section 146 of the

Internal Revenue Code released by the original applicant may be allocated to any other applicant for allocation for the same purpose for which the original application was made.

ITEM 7. Amend rule 265—8.7(7C) as follows:

265—8.7(7C) Expiration dates of applications and allocations.

8.7(1) All applications for current allocation received in any calendar year shall expire 120 days after the date of certification of allocation; provided that, before the expiration of the 120-day period, the issuer or beneficiary may make a request in writing to the governor's designee for an extension of not more than 30 days after the expiration of the 120-day period. Such request for extension shall be accompanied by an agreement among the issuer, the proposed purchaser of the bonds, and the beneficiary showing an intent of the proposed purchaser to purchase the bonds.

8.7(2) If the expiration date of either the 90-day 120-day period or any 30-day extension period is a Saturday, Sunday or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or previously described day.

8.7(3) All applications for current allocation received in any calendar year which do not otherwise expire under subrules 8.7(1) and 8.7(2) shall expire as of December 24 of that year except for applications for current year allocation for bonds described in Iowa Code section 7C.11, which expire on December 31 of that year.

ITEM 8. Amend rule 265—8.9(7C) as follows:

265—8.9(7C) Use by political subdivisions. With respect to the amount of the state ceiling allocated for the purpose of private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions under Iowa Code section 7C.4A(6), the political subdivision must use the proceeds to finance a project owned or utilized directly by the political subdivision, or finance a program of the political subdivision which the legislature by statute has authorized or directed the political subdivision to implement.

This rule is intended to implement Iowa Code section 7C.4A(6).

ITEM 9. Amend rule 265—8.10(7C) as follows:

265—8.10(7C) Application and allocation fees. The Iowa finance authority may charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the private activity bond state ceiling in accordance with these rules. A fee of ± 2 basis point (.01%) points (.02%) of the amount of state ceiling for which application is made shall be paid by the applicant upon filing the application with the governor's designee. ~~An additional fee of 1 basis point shall be paid by the applicant upon receipt of the certification by the governor's designee of the state ceiling allocated.~~

ITEM 10. Rescind and reserve rule **265—8.11(7C)**.